
HOUSE BILL 2052

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By Representatives G. Chandler, Quall, Bush, Grant, Hatfield and Kessler

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1 AN ACT Relating to the equal access to justice act; amending RCW
2 4.84.340, 4.84.350, and 4.84.360; and adding new sections to chapter
3 4.84 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout RCW 4.84.340 through 4.84.360.

9 (1) "Adjudicative proceeding" means an adjudicative proceeding as
10 defined in RCW 34.05.010 and an administrative review under RCW
11 34.05.464. RCW 4.84.340 through 4.84.360 and sections 4 and 5 of this
12 act apply only to the following adjudicative proceedings:

13 (a) Cases conducted for the department of social and health
14 services, but excluding the division of child support and the division
15 of juvenile rehabilitation;

16 (b) Licensing cases conducted for the liquor control board;

17 (c) Business and professional licensing cases for the department of
18 licensing, but excluding motor vehicle franchise cases under chapter
19 46.96 RCW;

1 (d) Business and professional licensing cases for the department of
2 labor and industries;

3 (e) Employer assessment and penalty cases conducted under chapters
4 49.17, 51.48, and 51.52 RCW for the department of labor and industries;
5 and

6 (f) Employer assessment and penalty cases conducted under chapter
7 50.24 RCW for the employment security department.

8 (2) "Administrative review" means an adjudicative proceeding under
9 RCW 34.05.464.

10 (3) "Administrative tribunal" means an independent agency that
11 conducts adjudicative proceedings, as defined in RCW 34.05.010, as its
12 sole or principal duty, to: (a) Review decisions of another agency or
13 governmental unit; or (b) resolve disputes in which the tribunal is not
14 a party.

15 (4) "Agency" means any state board, commission, department,
16 institution of higher education, or officer, authorized by law to make
17 rules or to conduct adjudicative proceedings, except those in the
18 legislative or judicial branches, the governor, or the attorney general
19 except to the extent otherwise required by law.

20 ~~((+2))~~ (5) "Agency action" means agency action as defined by
21 chapter 34.05 RCW.

22 ~~((+3))~~ (6) "Fees and other expenses" includes the reasonable
23 expenses of expert witnesses, the reasonable cost of a study, analysis,
24 engineering report, test, or project that is found by the court,
25 presiding officer, or reviewing officer to be necessary for the
26 preparation of the party's case, and reasonable attorneys' fees.
27 Reasonable attorneys' fees shall be based on the prevailing market
28 rates for the kind and quality of services furnished, except that (a)
29 no expert witness shall be compensated at a rate in excess of the
30 highest rates of compensation for expert witnesses paid by the state of
31 Washington, and (b) attorneys' fees shall not be awarded in excess of
32 one hundred fifty dollars per hour unless the court, presiding officer,
33 or reviewing officer determines that an increase in the cost of living
34 or a special factor, such as the limited availability of qualified
35 attorneys for the proceedings involved, justifies a higher fee.

36 ~~((+4))~~ (7) "Judicial review" means a judicial review as defined by
37 chapter 34.05 RCW.

38 (8) "Presiding officer" means a presiding officer under RCW
39 34.05.425.

1 (9) "Qualified administrative party" means (a) an individual whose
2 net worth did not exceed two hundred fifty thousand dollars at the time
3 the initial petition for an adjudicatory proceeding was filed, or (b)
4 a sole owner of an unincorporated business, or a partnership,
5 corporation, association, or organization whose net worth did not
6 exceed one million two hundred fifty thousand dollars at the time the
7 initial petition for an adjudicatory proceeding was filed, except that
8 an organization described in section 501(c)(3) of the federal Internal
9 Revenue Code of 1954 as exempt from taxation under section 501(a) of
10 the code and a cooperative association as defined in section 15(a) of
11 the Agricultural Marketing Act (12 U.S.C. 1141J(a)), may be a party
12 regardless of the net worth of such organization or cooperative
13 association.

14 ~~((+5))~~ (10) "Qualified judicial party" means (a) an individual
15 whose net worth did not exceed one million dollars at the time the
16 initial petition for judicial review was filed, or (b) a sole owner of
17 an unincorporated business, or a partnership, corporation, association,
18 or organization whose net worth did not exceed five million dollars at
19 the time the initial petition for judicial review was filed, except
20 that an organization described in section 501(c)(3) of the federal
21 Internal Revenue Code of 1954 as exempt from taxation under section
22 501(a) of the code and a cooperative association as defined in section
23 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141J(a)), may be a
24 party regardless of the net worth of such organization or cooperative
25 association.

26 (11) "Qualified party" means a qualified judicial party or a
27 qualified administrative party.

28 (12) "Reviewing officer" means a reviewing officer under RCW
29 34.05.464.

30 **Sec. 2.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to read
31 as follows:

32 (1) Except as otherwise specifically provided by statute, a court
33 shall award a qualified judicial party that prevails in a judicial
34 review of an agency action and a presiding officer or reviewing officer
35 shall award a qualified administrative party that prevails in an
36 adjudicative proceeding challenging an agency action, fees and other
37 expenses, including reasonable attorneys' fees, unless the court,
38 presiding officer, or reviewing officer finds that the agency action

1 was substantially justified or that circumstances make an award unjust.
2 A qualified party shall be considered to have prevailed if the
3 qualified party obtained relief on a significant issue that achieves
4 some benefit that the qualified party sought.

5 (2) The amount awarded a qualified party under subsection (1) of
6 this section shall not exceed (~~(twenty-five)~~) fifty thousand dollars
7 for the total request for the combined proceedings, administrative
8 hearing, administrative review, or superior court proceedings.
9 Subsection (1) of this section shall not apply unless all parties
10 challenging the agency action are qualified parties. If two or more
11 qualified parties join in an action, the award in total shall not
12 exceed (~~(twenty-five)~~) fifty thousand dollars. The court, presiding
13 officer, or reviewing officer, in its discretion, may reduce the amount
14 to be awarded (~~(pursuant to)~~) under subsection (1) of this section, or
15 deny any award, to the extent that a qualified party during the course
16 of the proceedings engaged in conduct that unduly or unreasonably
17 protracted the final resolution of the matter in controversy.

18 (3) The agencies that conduct their own administrative hearings or
19 administrative reviews under chapter 34.05 RCW, the chief
20 administrative law judge of the office of administrative hearings, and
21 the board of industrial insurance appeals are authorized to adopt rules
22 to implement RCW 4.84.340 through 4.84.360 and sections 4 and 5 of this
23 act. These rules may include reasonable requirements for notices of
24 appearances by authorized representatives, requirements for notices of
25 intent to seek fees under this section, limitations on the eligibility
26 for fees for nonattorney representatives, and a schedule for hours,
27 rates, or limitations on amounts of fees and other expenses presumed
28 reasonable for the type of adjudicative proceeding. In addition, rules
29 may set a maximum total amount including all fees and expenses for
30 specific types of adjudicative proceedings.

31 **Sec. 3.** RCW 4.84.360 and 1995 c 403 s 904 are each amended to read
32 as follows:

33 Fees and other expenses awarded under RCW 4.84.340 and 4.84.350
34 shall be paid by the agency over which the party prevails from
35 operating funds appropriated to the agency within sixty days. Agencies
36 paying fees and other expenses (~~(pursuant to)~~) under RCW 4.84.340 and
37 4.84.350 shall report all payments to the office of financial
38 management within five days of paying the fees and other expenses.

1 Fees and other expenses awarded by the court, presiding officer, or
2 reviewing officer shall be subject to the provisions of chapter 39.76
3 RCW and shall be deemed payable on the date the court, presiding
4 officer, or reviewing officer announces the award.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 4.84 RCW
6 to read as follows:

7 When an agency has made an offer to participate in an alternative
8 dispute resolution process, the appellant must participate in good
9 faith or be precluded from applying for an award of attorneys' fees or
10 expenses under RCW 4.84.340 through 4.84.360, this section, and section
11 5 of this act.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 4.84 RCW
13 to read as follows:

14 No fees or other expenses may be awarded against an administrative
15 tribunal.

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